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SUBJECT: UN OFFICIAL'S VISIT TO GUATEMALA SPURS ACTION ON CICIACS AND OHCHR

REF: (A) GUATEMALA 2868 (B) GUATEMALA 2840

Classified By: Ambassador Hamilton for reasons 1.5 (b) & (d)

¶1. (U) Summary: The Government of Guatemala sent UN SYG Kofi Annan a letter reaffirming its commitment to CICIACS and outlining interim measures it is taking to pave the way for CICIACS. The letter was prompted by the visit to Guatemala of UN U/S for Political Affairs Kieran Prendergast to Guatemala. The "Human Rights Coalition Against Clandestine Structures" issued a press release criticizing the GOG's letter to Annan and, more broadly, the GOG's failure to dismantle organized crime. On a separate but related matter, GOG officials have told the Embassy they are on the verge of reaching an agreement with the UN High Commissioner on Human Rights to open an office in Guatemala. End summary.

GOG LETTER TO THE UN

¶2. (U) Acting President Eduardo Stein's November 19 letter to UN SYG Kofi Annan reaffirmed the GOG's commitment to CICIACS without identifying a strategy for overcoming congressional and judicial opposition to elements of the CICIACS concept. As a "supplement" to the GOG's efforts to install CICIACS, Stein's letter said the GOG would establish a Special Prosecutor to combat organized crime and would ask the UN to provide international experts to help staff the office. In the letter, the GOG also committed to push for congressional approval of new laws against organized crime, including a witness protection law and the establishment of a National Forensic Institute, and made reference to GOG efforts to obtain wiretapping authority. (Embassy notes that a few days earlier, visiting German FM Joschka Fischer announced the FRG would provide some funding for the National Forensic Institute.) The letter said the GOG would form a High Level Commission with representatives from the Vice Presidency, the Ministry of Interior, the MFA, and the President Human Rights Commission, the Congress, the Human Rights Ombudsman, the Courts and the Prosecutor's Office to coordinate GOG efforts against organized crime.

¶3. (U) The Human Rights Coalition Against Clandestine Structures (HRCACS) issued a November 23 press release criticizing Stein's letter to Annan as "rhetorical subterfuge" to mask the GOG's lack of commitment. HRCACS pointed out that Guatemala already had a number of Special Prosecutors who had proven ineffective in tackling problems such as money laundering, narcotrafficking, corruption, and attacks against labor leaders, journalists and human rights activists. Some of the special prosecutors had international experts working with them to no avail. The communique also questioned the GOG's commitment (conveyed in Stein's letter) to increase funding for police, prosecutors and the courts, noting that the GOG's recently approved 2005 budget continued a downward trend for the criminal justice system. HRCACS signatories included prominent NGOs such as the Myrna Mack Foundation, the Rigoberta Menchu Foundation, CALDH, GAM and ODHAG.

¶4. (SBU) On a separate but related matter, GOG officials have told the Embassy they are on the verge of reaching a new agreement with the UN High Commissioner on Human Rights, which would presumably meet congressional concerns, in order to open an office in Guatemala. MFA U/S Marta Altolaguirre made this point to several embassy officers in the last week as did Presidential Human Rights Commissioner Frank LaRue.

PRENDERGAST'S VISIT

¶5. (C) The GOG's latest efforts on CICIACS and the OHCHR appear to have been prompted by the November 15 visit to Guatemala of UN U/S for Political Affairs Kieran Prendergast. Prendergast told the Ambassador that he had met with VP Stein, who had expressed frustration that the MFA had not yet reached an agreement with the UN High Commissioner for Human Rights for the opening of an OHCHR office in Guatemala. Stein thought the remaining differences were a matter that "could be resolved in ten minutes." Stein claimed to have given Guatemala's new permrep to the UN, Ambassador Jorge Skinner-Klee, a deadline of November 17 to strike a deal with Geneva, at which point he would take over the OHCHR negotiation.

¶ 16. (C) Prendergast noted that Skinner-Klee had recently paid him an introductory call, during which Skinner-Klee's opening gambit had been to feign an air of grievance for having been assigned to replace the popular and highly respected Gert Rosenthal as Guatemala's permrep to the UN. Skinner-Klee then segued into "preemptive truculence," asserting that his predecessor had had an easy job at a time when Guatemala enjoyed smooth relations with the UN, whereas Skinner-Klee expected he would have to deal with "problems."

¶ 17. (C) Prendergast said he was aware that Skinner-Klee was a cousin of Antonio Arenales-Forno, the leading congressional critic of the OHCHR and CICIACS initiatives, and thought that Skinner-Klee shared the same nationalist objections to UN "intrusion" into Guatemalan affairs.

¶ 18. (C) The Ambassador noted that FM Briz at a lunch the previous week had said the GOG was not opposed to having the OHCHR office report on Guatemala as long as it did not become the High Commissioner's report. Prendergast said he perceived some flexibility on the High Commissioner's part, too. But he also noted that he had no mandate from Geneva to negotiate on behalf of the High Commissioner and therefore had not been fully briefed on the issue. Prendergast advisor Martha Doggett said the High Commissioner required in the agreement a written reference to the office's mandate to observe and report on Guatemala.

¶ 19. (C) Prendergast said both Stein and Rosenthal had recommended that the OHCHR office should be prioritized ahead of CICIACS, since CICIACS was a tougher challenge. Prendergast indicated he agreed with pursuing them in that order. In response to the Ambassador's question, he said it was not clear to him who had the GOG's lead for developing a new CICIACS proposal. Doggett noted that Guatemalan Attorney General Florido had called on Prendergast's office in New York to flog his own request for technical assistance and funding but did not appear well-versed on CICIACS.

¶ 10. (C) In response to questions by Prendergast, the Ambassador noted that the Berger administration had demonstrated earlier in the year its ability to push legislation through the Congress with its all-consuming effort on the tax package. The Ambassador also noted that a CICIACS-type unit within the Public Ministry might still be able to achieve some of its original objectives even without the autonomy envisioned under the proposal that was shot down by the Constitutional Court.

¶ 11. (C) On November 16, Frank LaRue, head of the President's Commission on Human Rights (COPREDEH), told the Ambassador that VP Stein had convened a working group about CICIACS on November 13. LaRue, who participated in the meetings, said that the group had developed a strategy that entailed asking the UN to designate a Special Envoy to continue negotiating CICIACS with the GOG, lobbying Congress anew in January 2006, and seeking another judicial opinion once a new Constitutional Court is seated in April 2006. In the interim, the GOG would request UN assistance for Guatemalan prosecutors to investigate organized crime and clandestine groups.

COMMENT

¶ 12. (C) As outlined above, the GOG wants its Special Prosecutor proposal to be seen as complementary to its efforts to establish CICIACS. The HRCACS's concern is that the Special Prosecutor, once in place, will become an inadequate substitute for CICIACS, not a supplement. The original proposal for CICIACS envisioned an unprecedented level of intrusiveness and autonomy for international investigators to set up shop in Guatemala. Optimism for CICIACS's success hinged on the hope that the independence of its international staff would keep Guatemala's "hidden powers" from obstructing investigations. While the new Special Prosecutor may be a far cry from what was originally envisioned under the daring CICIACS proposal, it is the most feasible interim measure available to the GOG. The HRCACS's sharp criticism of Stein's letter to Annan is probably the result of the GOG's failure to consult with the NGOs which had campaigned for the creation of CICIACS. Reaching out to these NGOs, however, probably would not have netted the GOG any brilliant new strategy. In its communique, HRCACS does not offer any alternatives that get around the Constitutional Court's objections to CICIACS. But a more inclusive approach might have kept the HRCACS members inside the tent.

HAMILTON